



May 10, 2005

Floor Statements:

[Senator Hatch](#)

Noteworthy:

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And I think all of the attempts to either pigeon hole the debate or politicize the debate are going to fail, or they should fail, because ultimately we're looking to the Constitution of the United States of America.

And that's the way we started this debate, really, now almost two years ago. It has been consistent through 20 cloture votes in the last Congress. It's something that we will need to address because it's principle. It is fairness and it's duty.” **Senator Frist**, Media Availability, 5/10/05

[Transcript of Majority Leader Frist's Media Availability](#)

“(Frist) is trying everything in his power to try to resolve this matter but the offers by the Democrats I think show how unprincipled they've been on this thing because they're willing to let a few people overboard and let a few come through. That's just pure bunk. One person insisting on throwing overboard is Janice Rogers Brown. 76% of the vote on the supreme court of the state of California one the truly great people in this country, and her problem is she is a conservative Republican.” **Senator Hatch**, CNN Inside Politics, 5/10/09

[Transcript of Senator Hatch's appearance on CNN Inside Politics](#)

Statement of Orrin G. Hatch
United States Senate
May 10, 2005

SEN. HATCH. Mr. President, yesterday marked the fourth anniversary of President Bush's first judicial nominations, a group of 11 highly qualified men and women

nominated to the United States Court of Appeals. As I sat in the East Room at the White House on May 9, 2001, I hoped that the Senate would at least treat these nominees fairly.

But many of our Democratic colleagues instead chose to follow their Minority Leader's order, issued days after President Bush took office, to use "*whatever means necessary*" to defeat judicial nominees the minority does not like. While the previous three presidents saw their first 11 appeals court nominees confirmed in an average of just 81 days, today, *1461 days later*, three of those original nominees have not even received a vote, let alone been confirmed.

In 2003, the minority opened a new front in the confirmation conflict by using filibusters to defeat majority supported judicial nominees. Mr. President, this morning I will briefly address the *Top 10 Most Ridiculous Judicial Filibuster Defenses*. Time permits only brief treatment, but then it was difficult to limit the list to ten.

Number 10 is the claim that these filibusters are part of Senate tradition. Calling something a *filibuster*, even if you repeat it over and over, does not make it so. These filibusters block confirmation of majority supported judicial nominations by defeating votes to invoke cloture, or end debate. Either these filibusters happened before or they did not.

Let us take the evidence offered by filibuster proponents at face value.

These two charts list some representative examples of what Democrats repeatedly claim as filibuster precedents. As you can see, Mr. President, the Senate confirmed each of these nominations. As ridiculous as it sounds, filibuster proponents claim, with a straight face, that confirming these past nominations justifies refusing to confirm nominations today.

Some examples are more ridiculous than others.

Stephen Breyer is here on the Democrats' list of filibusters, suggesting that the Senate treated his nomination the way Democrats are treating President Bush's nominations today. The two situations could not be more different. Even though President Carter nominated Breyer in November 1980 after losing his bid for re-election and after Democrats lost control of the Senate, we voted to end debate and overwhelmingly confirmed Stephen Breyer just 26 days after his nomination.

The suggestion that confirming the Breyer nomination for the party *losing* its majority now justifies filibustering nominations for the party *keeping* its majority is, well, just plain ridiculous.

Number 9 on the list of most ridiculous judicial filibuster defenses is that they are necessary to prevent one-party rule from stacking the federal bench. If you win elections, you say the country has *chosen its leadership*; if you lose, you complain about *one-party rule*. When your party controls the White House, the president *appoints judges*. When the other party controls the White House, the president *stacks the bench*.

Our Democratic colleagues say we should be guided by how the Democratic Senate handled President Franklin Roosevelt's effort to pack the Supreme Court. It is true that FDR's *legislative* proposal to create new Supreme Court seats failed – and without a filibuster, I might add. But as it turned out, packing the Supreme Court required only filling the existing seats. President Roosevelt packed the Court all right, by appointing no less than eight Justices in six years, more than any President except George Washington himself.

As this chart shows, during the 75th, 76th, and 77th Congresses, when President Roosevelt made those nominations, Democrats outnumbered Republicans by an average of 70 to 20. Now *that* is one-party rule, and yet the Senate confirmed those Supreme Court nominees in an average of just 13 days, one of them the very day it was made, and six of them without even a roll call vote.

That is not because filibustering judicial nominations was difficult. In fact, our cloture rule did not then apply to nominations. A single member of that tiny beleaguered Republican minority could have filibustered these nominations and attempted to stop President Roosevelt from packing the Supreme Court.

Mr. President, the most important number on this chart is the number right here at the bottom, the number of filibusters against President Roosevelt's nominees. Zero.

Number 8 is the claim that, without the filibuster, the Senate would be a patsy, nothing but a rubberstamp for the President's judicial nominations.

To paraphrase a great Supreme Court Justice, if simply stating this argument does not suffice to refute it, our debate about these issues has achieved terminal silliness. Being on the losing side does not make one a rubberstamp.

For all these centuries of democratic government, have we seen only winners and rubberstamps?

Was the famous tagline for ABC's Wide World of Sports, *the thrill of victory and the agony of rubberstamping*?

Democrats did not start filibustering judicial nominations until the 108th Congress. Imagine the American history books describing the previous 107 as the Great Rubberstamp Senates.

Did Democrats rubberstamp the Supreme Court nomination of Clarence Thomas in 1991 since they did not use the filibuster? That conflict lasting several months and concluding with that 52-48 confirmation vote did not look like a rubberstamp to me.

Some modify this ridiculous argument by saying it applies when the same party controls both the White House and the Senate. They make the stunning observation that Senators of the president's party are likely to vote for his nominees. The Assistant Minority Leader, Senator Durbin, recently said, for example, that Republican Senators are nothing but *lapdogs* for President Bush.

Pointing at others can be dangerous because you have a few fingers pointing back at yourself. Counting both unanimous consent and roll call votes, more than 37,500 votes were cast here on the Senate floor on President Clinton's judicial nominations. Only 11 of them, just a teeny tiny three one-hundredths of one percent, were NO votes from Democrats. Were they just rubberstamping lapdogs?

The Constitution assigns the same roles to the president and the Senate no matter which party the American people puts in charge of which end of Pennsylvania Avenue.

In the 1960s, the Democrats were in charge, yet Minority Leader Everett Dirksen refused to filibuster judicial nominees of Presidents Kennedy or Johnson. Was he a rubberstamp?

In the 1970s, the Democrats were in charge, yet Minority Leader Howard Baker refused to filibuster President Carter's judicial nominees. Was he a rubberstamp?

In the 1980s, the Republicans were in charge, yet Minority Leader Robert Byrd did not filibuster President Reagan's judicial nominees. Was he a rubberstamp?

And a decade ago, the Democrats were again in charge, yet Minority Leader Bob Dole refused to filibuster President Clinton's judicial nominees. Was he a rubberstamp? To avoid being a rubberstamp, one need only fight the good fight, win or lose.

Number 7 on the list of most ridiculous judicial filibuster defenses is that these filibusters are necessary to preserve our system of checks and balances.

Mr. President, any civics textbook explains that what we call *checks and balances* regulate the relationship between the branches of government. The Senate's role of advice and consent checks the president's power to appoint judges, and we exercise that check when we vote on his judicial nominations.

The filibuster is about the relationship between the majority and minority in the Senate, not about the relationship between the Senate and the president. It actually interferes with being a check on the president's power by preventing the Senate from exercising its role of advice and consent at all.

Former Majority Leader Mike Mansfield once explained that by filibustering judicial nominations, individual Senators presume what he called "great personal privilege at the expense of the responsibilities of the Senate as a whole, and at the expense of the constitutional structure of the federal government."

In September 1999, the Senator from Massachusetts, Senator Kennedy, expressed the same view when he said: "It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote 'yes' or 'no.'" Those were the words of our colleague from Massachusetts, Senator Kennedy, give every Senator the opportunity to vote yes or no.

That was then; this is now.

Mr. President, in case anyone needs further clarification on this point, I ask unanimous consent that the definition of *checks and balances* from two sources, *congressforkids.net* and *socialstudieshelp.com*, be entered into the record at this point.

Number 6 on the list is that these filibusters are necessary to prevent appointment of extremists.

What our Democratic colleagues call *extreme*, the American Bar Association calls *qualified*. In fact, all three of the appeals court nominees chosen four years ago who have been denied confirmation received the ABA's highest *well qualified* rating. The same Democrats who once called the ABA rating the *gold standard* for evaluating judicial nominees now disregard it.

Did 76 percent of Californians vote to keep an extremist on their Supreme Court when they voted to retain Justice Janice Rogers Brown? Did 84 percent of Texans and every major newspaper in the state support an extremist when they re-elected Justice Priscilla Owen to the Texas Supreme Court?

Mr. President, the Associated Press reported last Friday that the Minority Leader reserves the right to filibuster what he calls *extreme* Supreme Court nominees. That is quite an escape *hatch*, if you will, since the minority already defines any nominee it does not like as *extreme*. This is simply a re-packaged status quo masquerading as reform.

If Senators want to dismiss as an *extremist* any judicial nominee who does not think exactly as they do, that is their right. That is, however, a reason for voting against confirmation, not for refusing to vote at all. As our former colleague Tom Daschle said: "I find it simply baffling that a Senator would vote against even voting on a judicial nominee."

Number 5 on the list of most ridiculous judicial filibuster defenses is the claim that these filibusters are about free speech and debate. If Senators cannot filibuster judicial nominations, some say, the Senate will cease to exist and we will be literally unable to represent our constituents.

The same men who founded this Republic designed this Senate without the ability to filibuster anything at all. A simple majority could proceed to vote on something after sufficient debate. Among those first Senators were Oliver Ellsworth of Connecticut, who later served on the Supreme Court, as well as Charles Carroll of Maryland and Richard Henry Lee of Virginia, who had signed the Declaration of Independence.

When they ran for office, did they know they would be unable to represent their states because they would be unable to filibuster?

Mr. President, these filibusters are about *defeating* judicial nominations, not *debating* them. The minority rejects every proposal for debating and voting on nominations it targets for defeat.

In April 2003, my colleague from Utah, Senator Bennett, asked the current Minority Leader how many hours Democrats would need to debate a particular nomination. His response spoke volumes: “[T]here is not a number in the universe that would be sufficient.”

Later that year, he said: “We would not agree to a time agreement...of any duration.” And just two weeks ago, the Minority Leader summed up what has really been the Democrats’ position all along: “This has never been about the length of the debate.”

He is right about that, this has always been about defeating nominations, not debating them.

If our Democratic colleagues want to debate, then let us debate. Let us do what Democrats once said was the purpose of debating judicial nominations. As my colleague from California, Senator Boxer, put it in January 1998, “let these names come up, let us have debate, let us vote.”

Number 4 on the list is that returning to Senate tradition regarding floor votes on judicial nominations would amount to breaking the rules to change the rules. As any consultant worth even a little salt will tell you, that is a catchy little phrase. The problem is that neither of its catchy little parts is true.

The constitutional option – which would change judicial confirmation procedure through the Senate voting to affirm a parliamentary ruling – would neither break nor change Senate rules.

While the constitutional option has not been used to break our *rules*, it has been used to break *filibusters*.

On January 4, 1995, the Senator from West Virginia, Senator Byrd, described how in 1977, when he was Majority Leader, he used this procedure to break a filibuster on a natural gas bill.

I have genuine affection and great respect for the Senator from West Virginia. Since I would not want to describe his repeated use of the constitutional option in a pejorative way, let me use his own words:

“I have seen filibusters. I have helped to break them. There are few Senators in this body who were here [in 1977] when I broke the filibuster on the natural gas bill....*I asked Mr. Mondale, the Vice President, to go*

please sit in the chair; I wanted to make some points of order and create some new precedents that would break these filibusters. And the filibuster was broken – back, neck, legs, and arms....So I know something about filibusters. I helped to set a great many of the precedents that are on the books here.”

He certainly did, and using the constitutional option today to return to Senate tradition regarding judicial nominations would simply use the precedents he put on the books.

Number 3 on the list of most ridiculous judicial filibuster defenses is that the constitutional option is unprecedented.

In 1977, 1979, and 1987, the Majority Leader, Senator Byrd, secured a favorable parliamentary ruling through a point of order, and a majority of Senators voted to affirm it. He did this even when the result he sought was inconsistent with the text of our written rules.

In 1980, he used a version of the same procedure to limit nomination-related filibusters. Majority Leader Byrd made a motion for the Senate to both go into executive session and proceed to consider a specific nomination.

At the time, the first step was not debatable, but the second step was debatable. A majority of Senators voted to overturn a parliamentary ruling disallowing the procedural change Majority Leader Byrd wanted. Seven of those Senators serve with us today and their names appear here on this chart. They can explain for themselves how voting against restricting nomination-related filibusters today is consistent with voting to restrict them in 1980.

Number 2 on the list is that preventing judicial filibusters will doom legislative filibusters. Our own Senate history shows how ridiculous this argument really is.

Filibusters became possible by dropping the rule allowing a simple majority to proceed to a vote. The legislative filibuster developed, the judicial filibuster did not. What we must today limit by rule or ruling we once limited by principle or self-restraint.

The filibuster is an inappropriate obstacle to the president’s judicial appointment power, but an appropriate tool for exercising our own legislative power. I cannot fathom how returning to our tradition regarding judicial nominations will somehow threaten our tradition regarding legislation.

The only threat to the legislative filibuster, and the only votes to abolish it, have come from the other side of the aisle.

In 1995, 19 Senators, all Democrats, voted against tabling an amendment to our cloture rule that would prohibit all filibusters, of legislation as well as nominations. Nine of those Senators serve with us still, and their names are here on this chart.

I voted then against the Democrats’ proposal to eliminate the legislative filibuster and I oppose eliminating it today. The Majority Leader, Senator Frist, also voted against the Democrats’ proposal to eliminate the legislative filibuster. In fact, that was his first vote as a new member of this body. I join him in re-committing ourselves to protecting the legislative filibuster.

I urge Democrats to follow the example of our colleague from California, Senator Boxer, who recently said she has changed her position, that she no longer wants to eliminate the legislative filibuster.

In 1995, *USA Today* condemned the filibuster as “a pedestrian tool of partisans and gridlock-meisters.” The *New York Times* said the filibuster is “the tool of the sore loser.” I hope these papers will reconsider their position and support the legislative filibuster.

Mr. President, the **Number 1** most ridiculous judicial filibuster defense is that those wanting to filibuster Republican nominees today opposed filibustering Democratic nominees only a few years ago.

In a letter dated February 4, 1998, for example, left-wing groups urged confirmation of Margaret Morrow to the U.S. District Court for the Central District of California. They urged us to “bring the nomination to the Senate, ensure that it received prompt, full and fair consideration, and that a final vote on her nomination is scheduled as soon as possible.” Groups signing this letter included the Alliance for Justice, Leadership Conference on Civil Rights, and People for the American Way.

As we all know, these left-wing groups today lead the grassroots campaign behind these filibusters that would deny this same treatment to President Bush’s nominees. Their position has changed as the party controlling the White House has changed.

Let me make it easy for the hypocrite patrol to check out my position on the Morrow nomination.

In the February 11, 1998, Congressional Record, on page S640, three pages *before* that letter from the left-wing groups appears, I opened the debate on the Morrow nomination by strongly urging my fellow Senators to support it. We did, and she is today a sitting federal judge.

The same Democrats who today call for filibusters called for up or down votes when a Democrat was in the White House. In 1999, my good friend from California, Senator Feinstein, a member of the Judiciary Committee, said of the Senate: “It is our job to confirm these judges. If we don’t like them, we can vote against them.” She said: “A nominee is entitled to a vote. Vote them up; vote them down.”

Another committee member, Senator Schumer, properly said in March 2000 that “the President nominates, and we are charged with voting on the nominees.”

I have already quoted the Senator from California, Senator Boxer, once, but in 2000 she said that filibustering judicial nominees “would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know – ever.” She was right, it had never been done before.

I appreciate what another member of the Judiciary Committee, Senator Kohl, said in 1997: “Let’s breathe life back into the confirmation process. Let’s vote on the nominees who have already been approved by the Judiciary Committee.”

The Senator from Iowa, Senator Harkin, who fought so strongly against the legislative filibuster in 1995, said five years later about the judicial filibuster: “If they want to vote against them, let them vote against them....But at least have a vote.”

The same view comes from three former Judiciary Committee chairmen and members of the Democratic leadership. A former committee chairman, Senator Biden, said in 1997 that every judicial nominee is entitled “to have a shot to be heard on the floor and have a vote on the floor.”

Former chairman Senator Edward Kennedy said in 1998: “If [Senators] don’t like them, vote against them. But give them a vote.”

And my immediate predecessor as chairman, Senator Leahy, said a year later that judicial nominees “are entitled to a vote, aye or nay.” In his own practical way, he said: “Vote them up or down.”

The Assistant Minority Leader, Senator Durbin, had urged the same thing in September 1998: “Vote the person up or down.”

Finally, Mr. President, the Minority Leader, Senator Reid, expressed in March 2000 the standard that I hope we can re-establish: “Once they get out of committee, bring them down here and vote up or down on them.”

The Majority Leader, Senator Frist, recently proposed a plan to accomplish precisely this result, but the Minority Leader dismissed it as, I want to quote this accurately now, “a big fat wet kiss to the far right.” I never thought voting on judicial nominations was a far right thing to do.

These statements speak for themselves. Do you see a pattern here? The message, at one time, seemed to be: let us debate, and let us vote. That should be the standard no matter which party controls the White House or the Senate.

Mr. President, as I close, let me summarize these *Top 10 Most Ridiculous Judicial Filibuster Defenses* in this way. Blocking confirmation of majority supported judicial nominations by defeating cloture votes is unprecedented. In the words of the current Judiciary Committee chairman, Senator Specter, “what Democrats are doing here is really seeking a constitutional revolution.”

We must turn back that revolution.

No matter which party controls the White House or Senate, we should return to our tradition of giving judicial nominations reaching the Senate floor an up or down vote. Full, fair, vigorous debate is one of the hallmarks of this body, and it should drive how we evaluate a president’s judicial nominations.

Honoring the Constitution’s separation of powers, however, requires that our check on the president’s appointment power not hijack that power altogether. This means debate must be a means to an end rather than an end in itself. Senators are free to vote against nominees they feel are extreme, but they should not be free to prevent other Senators from expressing a contrary view.

In this body, we govern ourselves through parliamentary rulings as well as by written rules. The procedure of a majority of Senators voting to sustain a parliamentary ruling has repeatedly been used to change Senate procedure without changing Senate rules, even to limit nomination-related filibusters.

Mr. President, I have tried here to deal with the substance of filibuster proponents’ arguments, albeit with some humor and a touch of sarcasm.

A few days ago, as the Salt Lake *Tribune* reported, the Minority Leader was in my home state “stopping just short of calling Utah Republican Sen. Orrin Hatch a hypocrite.” That is at least how the newspaper described it.

That is not what I consider a substantive argument. Perhaps those who dismiss their opponents as liars, losers, or lapdogs have nothing else to offer in this debate.

Yet debate we must, and then we must vote.
I yield the floor.

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SPEAKERS: U.S. SENATOR BILL FRIST (R-TN) SENATE MAJORITY LEADER

FRIST: Good afternoon. Welcome back from our recess last week. It's a busy week this week. A couple of opening comments and then I'd be happy to respond to questions.

Over the last several months, we've made huge progress in the United States Senate. We've delivered a class action bill to the president which was signed into law. We passed a bankruptcy reform, which we've waited about seven to eight years to pass.

More recently, we passed a budget. And I want to congratulate Judd Gregg for doing a tremendous job in passing the fifth fastest budget that we have ever passed.

Later this week, we will pass a highway bill. And hopefully later today -- or I expect later today -- we'll pass a supplemental bill to support our troops overseas and to provide for tsunami relief.

I think most of the questions today will be probably on other issues. I want to say right up front that I'm very pleased with the United States Senate, with the progress that has been made to date, and I expect that we will continue to make over this sessions in Congress.

I say that as we look to very important bills, the appropriations process in the future, an energy bill which will be marked up here shortly, and issues like immigration, which are important to the American people.

Secondly, the issue of judges, which is what many people here are focused on, and which we all should be focused on in the sense our objective is to restore over 214 years of Senate history and tradition to this body.

It's really pretty simple. And to me, it's common sense, and it has to do with principle, and that is that each of these nominees deserve an up-or-down vote on the floor of the United States Senate. Confirm them or reject them, vote yes or no, but allow them the courtesy of a vote.

Second, it is a matter of fairness to have somebody like Priscilla Owen, who has waited four years and one day for that up-or-down vote, for that courtesy of a vote -- it is wrong.

Priscilla Owen who, for 11 years, has served on the Supreme Court of Texas, who was reelected with over 84 percent approval, it is just wrong that we do not allow her, after four years, that courtesy of an up-or-down vote.

And thirdly, it's a matter of duty. As United States senators, our role is to give advice and consent. It's defined in the Constitution, advise and consent, and the way we do that is by voting, voting up-or-down, yes or no, confirm or reject -- so a matter of principle, a matter of fairness and a matter of duty and responsibility.

FRIST: Thirdly, the highway bill -- I will just briefly comment on. The highway bill -- we're making progress on. We've been on it for two weeks.

It is an economic bill; it's an economic development bill. It's a jobs bill. It is a bill that, I hope, that we can finish and I intend to finish this week.

I think we have to be very careful in not allowing it in the United States Senate to spin out of control from a fiscal standpoint. And I believe that we, in a final bill, need to or should respect the president's budget numbers.

I say that we'll continue to work on the bill over the next several days and hopefully complete it this week.

Let me go ahead and turn to questions. I think that's sort of the main thing.

QUESTION: Mr. Leader, on the question of judicial nominations, there are some who argue that there are quarters in your party that are very conservative and are paying close attention to this, and that this is an effort by conservatives to try to placate that part of the base, and possibly looking toward your goals in two or three years here.

Can you speak to that? And is this an effort to placate that? And what about your future goals and how that might play into this?

FRIST: The reason why I started with my opening statement -- it is so clear to me -- crystal clear to me -- that this is a matter of principle, and the principle is this fairness of an up-or-down vote.

And I think all of the attempts to either pigeon hole the debate or politicize the debate are going to fail, or they should fail, because ultimately we're looking to the Constitution of the United States of America.

And that's the way we started this debate, really, now almost two years ago. It has been consistent through 20 cloture votes in the last Congress. It's something that we will need to address because it's principle. It is fairness and it's duty.

FRIST: And we have to look to the will of the 100 United States Senators here and decide what is the challenging issue. And we'll likely be doing that -- I hope building a little bit on Senator Reid's comments yesterday that as he reached out and said that let's turn to one of the nominees, and coupling that with Senator Specter's comments yesterday, let's just follow regular order and bring people out and consider them one by one. We have four on the executive calendar. That's hopefully what we can proceed to do.

QUESTION: So when do you intend to do that, Mr. Leader?

FRIST: The question is: When we would do that? We need to finish the highway bill and the supplemental, and then we need to turn to 100 United States senators and move to the issue surrounding judges.

And we have four on the executive calendar, and, again, the suggestion has been made, let's go straight through the executive calendar and deal with them one by one. And I think it's time to do that.

Again, we're making a lot of progress with the bills underneath, but now is the time to address it.

QUESTION: (OFF-MIKE) continue to see filibusters on those four, or any of those four, will you then go to the nuclear option?

FRIST: You know, I've been very careful to keep all of our options open. And there are proposals that are floating, that make the headlines of your newspapers every day. And I don't necessarily encourage or discourage it, but it does reflect the restraint, the working together, the trying to come to some reasonable conclusion on getting these nominees a fair up-or-down vote.

I continue to talk with Senator Reid on a regular basis about this. You see many members working together. It's hard to compromise to the extent that people don't get an up-or-down vote. All of you know that I put a proposal on the table last, or a week and a half ago, the fair proposal, which addresses their concerns in that in the past they say that people have been bound up in committee, and therefore, we look at the Specter protocol to get people out of committee, and addresses our concern, the fairness of an up-or-down vote. All of these proposals continue to be discussed.

I do think that we need, again, to look to the 100 United States Senators and see what their will is to move forward on judges. We have 46 vacancies now, 16 judicial emergency vacancies, so it's time for us to move to the issue of judges.

QUESTION: Senator Frist, do you trust Senator Lott...

FRIST: Yes.

QUESTION: ... in terms of his motivation?

(LAUGHTER)

FRIST: I do.

QUESTION: And in terms of his motivations, do you think that his efforts to negotiate with Senator Nelson are helpful or undercutting to your...

(CROSSTALK)

FRIST: Very helpful.

The question is on the negotiations between Senator Nelson and Senator Lott. They reflect lots of negotiations that have gone on at the leadership level among senators as people trying to move forward and get a fair up-or-down vote, in recognition that the goal is the restoration of 214 years of tradition, that what went on in the last Congress is really unacceptable.

FRIST: And I don't think we're going to see that again, in any case. I don't think anybody's intention is to go through what we did in the last Congress.

So I have been in touch on a regular basis with Senator Lott. I have talked to Senator Nelson. There are lots of discussions going on.

And again, it's a reflection of how difficult it is to come up with proposals, if you're based on the principle of allowing people a fair up-or-down vote.

QUESTION: Senator Nelson said this morning one of the sticking points, the sticking point, are the seven leftover nominees who were blocked last year. Would one solution to this problem be for some of those nominees to voluntarily withdraw their names so others could go forward?

FRIST: I think Senator Nelson may have said that it's just those seven nominees. And it is a challenge, because we have seven nominees, each of whom deserve an up-or-down vote, and some of whom have waited four years for the fairness of that vote.

So I would agree, but we also have to look to the future, to see that nominees for that appellate or circuit court level and the Supreme Court have that opportunity for an up-or-down vote. So I wouldn't say we just have to address the seven.

Could they withdraw? I wouldn't speak for them, but I can't imagine all seven people withdrawing, but I guess that wouldn't be on the executive calendar.

QUESTION: (OFF-MIKE) Republican votes for the constitutional option, do they have the freedom to vote against the nominees once they come to the floor? Can you spare a few votes?

FRIST: That's a good question.

FRIST: The question is: What does leadership -- I guess you're talking about me -- leadership expect and know?

The constitutional option, which is hypothetical, I think Senator Reed is right in the sense that let's start -- and Senator Specter, you have to put to together, because we don't want to cherry pick who you bring. We have four people on the executive calendar, and let's bring them with the same time agreement to the floor and just go 10 hours, 10 hours, 10 hours -- or a few more hours if we need that -- with the executive calendar.

If we ended up going to a constitutional option -- which is, as we've talked about on the floor many times, been used, mainly by the other side of the aisle -- if that were the case, would I expect people to vote in some sort of partisan leadership way, or up-or-down votes on the nominees?

And the answer is no. And you could vote for the constitutional option, but give each nominee a fair, up-or-down vote that they deserve, fulfilling our responsibility.

And separate from that you, as an individual senator, have responsibility for determining whether or not that judicial nominee is appropriate to be confirmed as a judge.

And that's an important vote.

STAFF: One more?

QUESTION: (OFF-MIKE) constitutional option but still lose on the underlying nominations?

(CROSSTALK)

QUESTION: Do you see any compromise that will allow for anything other than an up-or-down vote on all of those seven nominees?

FRIST: The answer is yes. If we go through regular order, just start bringing the people up -- bring up, say, one of the four nominees, and followed with the next nominee -- and people show restraint and they give an up-or-down vote, then you don't need a constitutional option. You don't need side agreements cut at all.

Thank you.

END

Transcript of Senator Hatch

CNN, Inside Politics

May 10, 2005

JUDY WOODRUFF: with me now talk more about the senate's standoff over judicial filibusters is Orrin hatch of Utah. He is a member and former chairman of the judiciary committee. Senator hatch, good to see you.

SENATOR ORRIN HATCH: good to see you, Judy.

WOODRUFF: your leader in the senate says Bill Frist is going to put a showdown next week over this issue. Does he have the votes?

SEN. HATCH: I think he will. I don't think there is any question about. He is trying everything in his power to try to resolve this matter but the offers by the democrats I think show how unprincipled they've been on this thing because they're willing to let a few people overboard and let a few come through. That's just pure bunk. One person insisting on throwing overboard is Janice Rogers Brown. 76% of the vote on the supreme court of the state of California one the truly great people in this country, and her problem is she is a conservative republican.

SEN. WOODRUFF: well, the democrats say what they're trying to do is come up with a compromise that works for both sides. But you're saying that's not doable?

SEN. HATCH: what they've suggest so far is just cannot be doable in my opinion. And I think in the opinion of the majority leader. Just keep in mind, you know, they gripe about the way Clinton's judges were traded. Well, think about it, Reagan was the all-time confirmation champion. He got 382 judges but he had six years of republicans in control of the senate to help him. Clinton got 377 through just five less than Reagan and he had only two years of democrats in the senate to help him. The other six years I was pushing them through for him as fast as I could. They griped because some are left over -- some are always left over. Democrats have left over. But when they get to the floor, what's wrong with giving him a vote up and down?

WOODRUFF: as you just said yourself, they are pointing out that when you were chairman the judiciary committee they say something like 60 of bill Clinton's judicial nom noose were bottled up, and in fact Harry Reid, I'm going to quote what senator reed had to say. He said, I can't imagine how Orrin Hatch can keep a straight face. I don't know how in the framework of intellectual honesty he can say the things he does, and he's referring to what he says is a double standard here.

SEN. HATCH: I will not comment about that because that's ridiculous. The fact of the matter is, there have always been people left over. They double count the leftovers and I have to say, think of those facts. Clinton almost got as many through with six years of a republican senate opposition as Reagan did who had six years with the republican help. And they're griping? Come on! They're always have been people who have been held up. And you'll hear them crying, moan and groaning. But facts really aren't on their side and frankly there's no excuse for what they're doing here. This is the first time we've really had filibusters of majority bipartisan, majority-approved nominees in the history of this country. It's the first time.

WOODRUFF: but senator, they are saying there is clearly a double standard here. That whether, you know, whether you go purely by the numbers or not, they're saying republicans are using a standard -- or are saying there shouldn't be a standard. That you yourself used years ago.

SEN. HATCH: well, the fact of the matter is we believe the standard ought to be the same as it's been for 214 years. And that is, when a nominee hits the floor, they deserve a vote up and down. What's wrong with that? And in this case, all 10 of these nominees that have been filibustered have bipartisan majority support. When it's wrong with giving them a vote up and down? and by the way, for 214 years before president bush became president, these nominees did get votes on the floor. And I don't care what kind of phony baloney arguments they come up with and they will. These businesses say my goodness. People didn't make it out of committee. Well, that's been true. Whether the democrats have controlled the committee. Where the republicans have controlled the committee. but think of the totality of how many of them --

WOODRUFF: senator --

SEN. HATCH: I did everything I could to help Clinton get his judges through, but what they're doing is filibustering and stopping people who have not only aba approval but bipartisan majority support and who would win on the floor.

WOODRUFF: senator, it doesn't affect your think with -- your thinking at all that the public opinion polls that people do not support this idea.

SEN. HATCH: now wait a minute. Wait a minute. you're quoting the ""Washington post"" which skewed the questions so that they got a skewed answer. if you really --

WOODRUFF: well, I'm actual lie quoting what is described as a hot line west hill survey.

SEN. HATCH: well, come on. You know that know who the pollsters are and the real pollsters will show you that people believe that these judgeship nomination get a vote up and down on it's especially because that is a bipartisan majority want.

WOODRUFF: we hear you, senator. and we thank you for joining us.

SEN. HATCH: nice to be with you, Judy.

WOODRUFF: appreciate it.

SEN. HATCH: you bet.

WOODRUFF: coming up next, we'll get a democrat's view of the filibuster stalemate. are senate leaders out of option or room for compromise? i will ask the ranking democrat pat Leahy next....